

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1030 – 2015  
:   
vs. :   
:   
FLOYD SMITH, :   
Defendant : CRIMINAL DIVISION

OPINION IN SUPPORT OF ORDER OF MAY 25, 2016  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

After a jury trial on March 10, 2016, Defendant was convicted of two counts of DUI (incapable of safe driving and high rate of alcohol) and two counts of endangering the welfare of children (his two daughters), based on evidence he drove while intoxicated with his daughters in the car. He was sentenced on May 25, 2016, to county incarceration of forty days to 18 months. In the instant appeal, Defendant contends the court erred in admitting evidence of his statement to police that he had been driving the car, asserting there was no independent evidence of such and thus the admission of that evidence was a violation of the *corpus delecti* rule.

At trial, the arresting officers testified that they received a report of a person possibly driving intoxicated. One of the officers testified the report described the person as a black male driving a silver vehicle and that there were two children in the vehicle. The other officer testified that Defendant's name was provided. Based on the report, the officers (one of whom testified he knew the defendant and where he lived) drove to Defendant's residence where they encountered him and his two daughters standing next to the vehicle. The encounter occurred eleven minutes after the report was received, at 11:11 p.m. Based on his belief that Defendant was intoxicated, the officer asked Defendant to

perform field sobriety tests, and since in performing those tests Defendant displayed signs of impairment, Defendant was arrested and taken for a blood draw. Following that draw, the officer asked Defendant where he had been coming from and his response contained an admission that he had been driving.

The court believes that the evidence that police received a report of a black male in a silver vehicle possibly driving intoxicated with two children in the car (even without Defendant's name being provided) and the officers' encounter, eleven minutes later, with a black male in a silver vehicle standing next to it with two children standing there as well, that late at night, is sufficient to establish, albeit circumstantially, that the crimes of DUI and endangering occurred. For that reason, the court found that admission of Defendant's statements was not a violation of the *corpus delecti* rule.

Dated: July 22, 2016

Respectfully submitted,

Dudley N. Anderson, Judge

cc: DA  
PD  
Gary Weber, Esq.  
Hon. Dudley N. Anderson